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QUALYS INC.

15 **UNITED STATES DISTRICT COURT**
16 **NORTHERN DISTRICT OF CALIFORNIA**
17 **OAKLAND DIVISION**

18
19
20 FINJAN, INC.,
21 Plaintiff,
22 v.
23 QUALYS INC.,
24 Defendant.
25

Case No.: 4:18-cv-07229-YGR

**JOINT CLAIM CONSTRUCTION AND
PRE-HEARING STATEMENT**

Pursuant to the Court's Scheduling Order (Dkt. 39) and Patent L.R. 4-3, Plaintiff Finjan, Inc. ("Finjan") and Defendant Qualys, Inc. ("Qualys") hereby submit this Joint Claim Construction and Pre-Hearing Statement.

I. PATENT L.R. 4-3(a): PROPOSED CONSTRUCTION OF EACH AGREED TERM.

The parties' agreed constructions are provided below.

Patent	Term	Agreed Construction
6,154,844 8,677,494	"downloadable"	an executable application program, which is downloaded from a source computer and run on the destination computer
6,154,844	"means for receiving a Downloadable"	Function: receiving a Downloadable Structure: Downloadable file interceptor
6,154,844	"means for generating a first Downloadable security profile that identifies suspicious code in the received Downloadable"	Function: generating a first Downloadable security profile that identifies suspicious code in the received Downloadable Structure: content inspection engine programmed to perform the algorithm disclosed at Col. 8, lines 51-60 of the '844 Patent
6,154,844	"means for linking the first Downloadable security profile to the Downloadable before a web server makes the Downloadable available to web clients"	Function: linking the first Downloadable security profile to the Downloadable before a web server makes the Downloadable available to web clients Structure: content inspection engine programmed to perform the algorithm of step 630 disclosed at FIG. 6, Col. 8, lines 65-67 and Col. 6, lines 13-24 of the '844 Patent
6,154,844	"means for comparing the first downloadable security profile against the security policy if the first downloadable security profile is trustworthy" ¹	Function: comparing the first downloadable security profile against the security policy if the first downloadable security profile is trustworthy Structure: network protection engine or computer protection engine
6,154,844	"means for determining whether	Function: determining whether to trust the first downloadable security profile

¹ In light of the Court's ten-term limit, Qualys does not dispute Finjan's proposed construction, but reserves the right to seek clarification of the construction should the need arise. Finjan disagrees that Qualys may dispute these terms later, after it has already agreed to their construction here.

Patent	Term	Agreed Construction
	to trust the first Downloadable security profile” ¹	Structure: network protection engine or computer protection engine
7,975,305 8,677,494	“database”	a collection of interrelated data organized according to a database schema to serve one or more applications
8,225,408	“parse tree”	a hierarchical structure of interconnected nodes built from scanned content

II. PATENT L.R. 4-3(b): PROPOSED CONSTRUCTION OF EACH DISPUTED TERM.

The parties’ proposed additional claim constructions are provided below. All supporting evidence for the parties’ claim constructions is provided in Exhibit A. The parties reserve their rights to cite additional supporting evidence based on arguments raised in the claim construction briefs.

U.S. Patent No. 6,154,844		
Claim Term	Finjan’s Proposed Construction	Qualys’s Proposed Construction
“web client”	No construction necessary – plain and ordinary meaning.	an application on the end-user’s computer that requests a downloadable from the web server

U.S. Patent No. 6,965,968		
Claim Term	Finjan’s Proposed Construction	Defendants’ Proposed Construction
“receiver”	No construction necessary – plain and ordinary meaning.	Governed by 35 U.S.C. § 112(6) without corresponding structure
“transmitter”	No construction necessary – plain and ordinary meaning.	Governed by 35 U.S.C. § 112(6) without corresponding structure
“dynamically generating a policy index”	No construction necessary – plain and ordinary meaning.	creating or updating a policy index in response to user requests for cached or non-cached content
“known to be allowable relative to a given policy” / “allowable relative to a given policy”	No construction necessary – plain and ordinary meaning.	Whether the given digital content may be sent to the web client
“memory storing a cache of digital content”	No construction necessary – plain and ordinary meaning.	a memory storing [memory for storing] a collection of digital content previously requested and retrieved for a web client

U.S. Patent No. 7,418,731		
Claim Term	Finjan's Proposed Construction	Defendants' Proposed Construction
"incoming files from the Internet"	No construction necessary – Plain and ordinary meaning	Internet files requested by an intranet computer

U.S. Patent No. 8,141,154		
Claim Term	Finjan's Proposed Construction	Defendants' Proposed Construction
"a content processor" ²	No construction necessary – plain and ordinary meaning.	a processor that processes modified content; the content processor is part of the computer being protected from dynamically generated malicious content
"receiver"	No construction necessary – plain and ordinary meaning.	Governed by 35 U.S.C. § 112(6) without corresponding structure
"transmitter"	No construction necessary – plain and ordinary meaning.	Governed by 35 U.S.C. § 112(6) without corresponding structure
"security computer"	No construction necessary – plain and ordinary meaning.	a computer that determines whether the content received by the content processor is malicious

U.S. Patent No. 8,225,408		
Claim Term	Finjan's Proposed Construction	Defendants' Proposed Construction
"instantiating, by the computer, a scanner for the specific programming language"	No construction necessary – plain and ordinary meaning.	substituting specific data, instructions, or both into a scanner to make it usable for scanning the specific programming language

U.S. Patent No. 8,677,494		
Claim Term	Finjan's Proposed Construction	Defendants' Proposed Construction
"receiver"	No construction necessary – plain and ordinary meaning.	Governed by 35 U.S.C. § 112(6) without corresponding structure

² Given the Court's ten-term limit, Qualys is not seeking a construction of "process content" as it appears in the '154 patent, but reserves the right to argue that it is, in effect, synonymous with "a content processor." Finjan disagrees that Qualys may reserve the right to dispute this term later.

1 **III. PATENT L.R. 4-3(c): IDENTIFICATION OF 10 TERMS, THE CONSTRUCTION OF**
2 **WHICH WILL BE MOST SIGNIFICANT TO RESOLUTION OF THE CASE.**

3 **Finjan's Statement:**

4 Qualys is playing games with the Patent Local Rules. At 1:00 p.m. on the day this Joint Claim
5 Construction Statement was due, Qualys informed Finjan for the first time that it would agree to
6 Finjan's construction of four of the five terms that Finjan identified as most significant under Patent
7 Local Rule 4-3(c). Qualys did so even though the disputes over these terms had existed for months
8 and moreover Finjan emailed Qualys on October 30th asking whether Qualys would agree to Finjan's
9 constructions of these terms. Qualys waited to respond until 1:00 p.m. on the due date, December 4th,
10 so that it could significantly narrow the disputed terms at the last second and thereby attempt to select
11 nearly all of the ten terms itself that the parties were supposed to *jointly* identify for construction.

12 Further, Qualys actually identifies *fifteen* total terms for construction below, instead of the ten
13 total terms allowed under the Patent Local Rules and this Court's Standing Order for Patent Cases.
14 Namely, Qualys combines the terms "receiver" and "transmitter" from three different patents into just
15 two terms. The reality is that these six terms are used in three different patents and will require
16 separate arguments and analyses. This is especially true considering Qualys' contention that all six of
17 these terms are indefinite, which will require Finjan to rebut those six contentions by going through
18 each patent individually and identifying the support in each patent that provides the structure for each
19 of these six terms. These are three different patents, with different specifications, from different
20 families, with different inventors, and will, therefore, require different analyses for each of the
21 different patents. Thus, Qualys's proposal does not "group" any issues, because they are not related.

22 Lumping these six terms across three patents into two total terms below will also prejudice
23 Finjan during claim construction due to page-limit constraints, and will increase the burden on Finjan
24 and the Court beyond that provided for in the Patent Local Rules and this Court's Standing Order for
25 Patent Cases. Finjan asked Qualys to cut its list of terms for construction down to five pursuant to the
26 local rules. Qualys refused. Thus, Finjan requests that the Court order Qualys to choose five terms for
27 construction instead of the fifteen it has chosen below.
28

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